

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments.)
FM Broadcast Stations)
(Dearing, Kansas))

MM Docket No. 95-121
RM-8660

RECEIVED

OCT 21 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: The Chief, Allocations Branch

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF KGGF-KUSN, INC.

KGGF-KUSN, Inc. ("KGGF"), the licensee of KGGF(AM) and KUSN(FM), Coffeyville, Kansas, hereby submits its reply in the above-referenced proceeding. This reply is timely filed pursuant to the deadline set forth in the Notice of Proposed Rule Making ("NPRM").

1. William Bruce Wachter ("Wachter") filed a Petition for Rule Making on June 7, 1995, requesting the allotment of Channel 251A to Dearing, Kansas. The FCC responded by issuing its NPRM. Wachter filed comments supporting the allocation on August 29, 1995. In his comments, Wachter stated:

Dearing is a Census Designated Place, and is also an incorporated community. Therefore, presumably, it has a need for a first local broadcast outlet for self-expression.

Wachter Comments, at 2 (emphasis added). Wachter offered no additional information about Dearing or why he believes the community could "presumably" support its own broadcast station.

2. KGGF, on the other hand, filed comments on September 15, 1995, describing in detail why Dearing should not be considered a community for allotment purposes. Among the reasons that KGGF offered were: (1) Dearing has an insufficient population base (428 persons) to support a broadcast station; (2) Dearing is a bedroom community of Coffeyville, which is

No. of Copies rec'd
List ABCDE

049

approximately three miles away from the Coffeyville city limits; (3) Dearing has no schools of its own, but rather is part of the Coffeyville school system; (4) Dearing is part of the Coffeyville water district; (5) Dearing has no industry; (6) Dearing has no medical facilities; (7) Dearing has no local newspaper; (8) Dearing has no civic or cultural organizations; (9) Dearing has no business or political organizations; and (10) Dearing has to rely on Montgomery County, Kansas for road maintenance and professional police and fire protection.^{1/} KGGF Comments, at 2-3. Furthermore, KGGF stressed that the allotment of Channel 251A to Dearing would only exacerbate the economic plight of small market radio broadcasters, such as KGGF, which are facing ever-increasing competition for fewer advertising dollars -- a position that the Commission has recognized and to which it is sympathetic. Id. at 2, 4 (citing Revision of Radio Rules and Policies, 7 FCC Rcd 6387 (1992)).

3. After being served with KGGF's comments, Wachter obviously realized that his comments were deficient and attempted to cure the deficiency by submitting additional information about Dearing in his reply comments, which he filed on or about September 25, 1995. Wachter's attempt to cure the deficiency is a violation of the Commission's long-standing case precedent. For example, Columbia Broadcasting System, Inc., 46 FCC 2d 903, 905 (1974), holds that a petitioner will not be permitted to cure a defective petition "where information contained in its reply was readily available and could have been included in the original petition." See also, Industrial Business Corporation, 40 FCC 2d 69 (1973) (same); Scripps-Howard Broadcasting Co., 26 FCC 2d 824 (1970) (same); and Valley Telecasting Co. v. FCC.

^{1/} While Wachter implies that Dearing has its own fire department, fire protection is provided by Montgomery County, Kansas.

338 F.2d 278, 279 (D.C. Cir. 1964) (noting that a “disorderly presentation cripples any decision-making process and handicaps the agency in carrying out its function”).

4. In the instant case, the additional scanty information that Wachter included in his reply about the few businesses, churches, and town officials in Dearing was readily available to Wachter at the time he filed his comments, and is still not sufficient to support the allocation. Thus, Wachter must not be allowed to supplement the record with this unauthorized information.^{2/}

5. In an effort to defend himself against the argument that Dearing is too small for its own broadcast station, Wachter cites Mountain Pass, California, 45 RR 2D 58 (1979), a case where the Broadcast Bureau allocated an FM channel to an unincorporated community of approximately 250 residents. Mountain Pass is inapposite to the instant proceeding. Although the Bureau allocated a channel to the community, it did so primarily in order for the would-be licensee to provide service to the eight million people that traveled along Interstate 15, which cut through the Mountain Pass service area. Id. at 59-60. The Bureau did not allocate the channel to Mountain Pass primarily in order to serve the 250 residents of the community, as Wachter implies.

6. Finally, it must be reiterated that the addition of yet another broadcast station in the market will likely jeopardize the economic stability of the existing licensees in the Coffeyville market. The Commission has acknowledged that “this intense inter- and intra-industry competition has produced an extremely fragmented radio marketplace in which existing

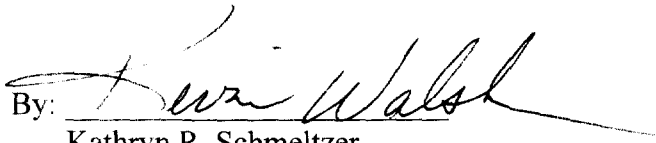
^{2/} In any event, assuming, arguendo, that the Commission were to allow Wachter to cure his deficient pleading by including additional information about Dearing, the fact that the community is not suitable for its own FM allotment would not change. As noted, Dearing is simply too small to support its own broadcast station, especially given the fact that the Coffeyville stations already provide service to Dearing.

and future radio broadcasters will be subject to increasingly severe economic and financial stress." Revision of Radio Rules, 7 FCC Rcd at 6387 The ever-increasing competition faced by stations, such as KGGF(AM) and KUSN(FM), is affecting the ability of small-market broadcasters to serve the public. The allotment of Channel 251A to Dearing would only serve to exacerbate the already overly competitive Coffeyville-area marketplace.

WHEREFORE, the premises considered, KGGF-KUSN, Inc. respectfully asks the Commission to deny the request of William Bruce Wachter to have FM Channel 251A allotted to Dearing, Kansas.

Respectfully submitted,

KGGF-KUSN, INC.

By: 
Kathryn R. Schmeltzer
Kevin M. Walsh

Its Attorneys

FISHER WAYLAND COOPER
LEADER & ZARAGOZA, L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006
(202) 659-3494

October 2, 1995

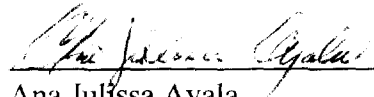
P:KMW/4102002P.001

CERTIFICATE OF SERVICE

I, Ana Julissa Ayala, do hereby certify that I have, this 2nd day of October, 1995 mailed by United States first-class mail, postage prepaid, a copy of the foregoing "**REPLY COMMENTS OF KGGF-KUSN, INC.**" to the following:

* John A. Karousos, Chief
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8322
Washington, D.C. 20554

Lauren A. Colby, Esq
10 E. Fourth Street
P.O. Box 113
Frederick, MD 21705-0113


Ana Julissa Ayala

*Hand-Delivery